

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7394 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

@

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ALIAHMAD I PATEL

Appearance:

1. Special Civil Application No. 7394 of 1991
MR HARDIK C RAWAL for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
-

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/04/2002

ORAL JUDGEMENT

Heard Mr.H.C.Rawal, learned advocate appearing on behalf of the petitioner Corporation.

Though notice of Rule though served on the respondent workman, but none remained present on behalf

of the present proceeding on behalf of the respondent and no advocate seems to have engaged by the respondent and therefore, this matter is taken up for final hearing even in absence of the respondent workman.

The petitioner Corporation has challenged the award passed by the labour Court, Vadodara in Reference No.540 / 1986 dated 17th January, 1991, wherein the labour court has set aside the order of dismissal dated 24th December, 1984 and granted reinstatement with continuity of service with 60 % backwages of the interim period.

This Court has issued Rule and granted ad-interim relief in terms of Para-8[b]. However, this Court has observed that if the Corporation thought it fit, the petitioner Corporation would be at liberty to employ the workman concerned in some other equivalent category and subject to the result of the petition.

The petitioner Corporation has produced on record the past record of the respondent workman which is at Exh.C on page.31 of this petition. Learned advocate Mr.H.C.Rawal for petitioner Corporation has submitted that the respondent workman was working as Conductor and his bus which was on route Panigate to Nayay Mandir, checked by the checking staff on 2nd December, 1983, on that occasion, three misconduct were committed by the respondent workman. The first misconduct is, from one passenger travelling from Pani Gate to Nayay Mandir, the workman though collected fare of Rs.0.25 ps but did not give ticket, the second charge against the respondent workman of having Rs.4.60 ps excess in the personal cash and the third allegations was, Rs.10.50 ps deficit in the S.T.Cash. Over and above, the way bill was not filled up by the respondent workman. On the basis of the said allegations, chargesheet was served on the respondent workman and ultimately, after completion of the departmental inquiry, the respondent workman was dismissed from service on 21st December, 1984. In view of these allegations, learned advocate Mr.Rawal has submitted that misconduct has been found to be proved before the labour court and thereafter the labour court has exercised the powers under Section 11-A of the I.D.Act directing reinstatement with continuity of service with 60 % backwages of the interim period. Learned advocate Mr.Rawal has also submitted that the respondent workman has family of many members and has liability of maintenance of the family and the workman will take care in future. That said incident occurred because of bonafide mistake on the part of the workman.

It is also pointed out that these submissions were also made by the workman before the departmental authority and the same has been considered by the labour court and granted reinstatement with continuity of service with 60 % backwages. Therefore, learned advocate Mr.Rawal has submitted that once misconduct is found to have proved and looking to his past record, wherein seven defaults have been committed by the respondent workman, then the labour court should not have exercised the powers under Section 11-A of the I.D.Act, 1947. Therefore, according to him, the labour court has committed gross error in passing the award.

I have considered the submissions of the learned advocate Mr.Rawal for petitioner. It is true that the allegations made against the respondent workman to recover fare of Rs.0.25 ps and not issuing the tickets to one passenger while working in city Such incident might have occurred in the city bus because of short distance between two stations. Therefore, moment the conductor has recovered the amount and if the bus was checked immediately, such incident might have occurred and therefore, the presumption is there was no dishonest intention on the part of the workman. So far as excess amount in the personal cash and some deficit in S.T.Cash, there might have some mistake on the part of the workman because in calculating the amount from passenger. Thus, in overall view of the matter, the misconduct cannot be considered to serious one which warranted punishment of dismissal and therefore, the labour court has considered this aspect and granted reinstatement with continuity of service. Therefore, in above view of the matter, according to my opinion, the labour court has not committed any error while granting reinstatement with continuity of service to the respondent workman. However, looking to the gravity of misconduct which was proved against the respondent workman and considering the aspect relating of backwages which is awarded at 60 % of the interim period, it seems that the labour court has ignored past record of the respondent workman. The respondent workman was dismissed from service on 22nd December, 1984 and award passed by the labour court after about seven years on 17th January, 1991. Therefore, looking to the past record, once he was dismissed from service on 6th September, 1976 and the fact that the labour court has awarded rein statement with continuity of service, so also the fact that industrial dispute which came to be referred for adjudication on 24th June, 1986, the grant of 60 % backwages of the interim period as awarded by the labour court seems to be on higher side. It is also necessary to note that the labour court

has not imposed any punishment for the misconduct which was found to have proved . Mere denial of 40 % backwages to the respondent, cannot be said to be sufficient punishment. Therefore, considering all the se facts and circumstances of the case, according to my opinion, if 60 % backwages awarded by the labour court is reduced to 30 % of the interim period with effect from the date of reference i.e. 24th June, 1986 will the meet of ends of justice between the parties and hence, the award under challenge requires to be modified accordingly.

In the result, present petition is partly allowed. The award in question is, therefore, modified in following terms;

The award in question passed by the labour court, Vadodara in Reference No.540 / 1986 dated 17th January, 1991 so far relates to grant of reinstatement with continuity of service and punishment of stoppage of one increment with cumulative effect is not disturbed by this Court and the same stand intact. However, 60 % backwages granted by the labour court in favour of the respondent workman is reduced to 30 % of the interim period with effect 24th June, 1986 upto 17th January, 1991.

Rule is made absolute accordingly. No order as to costs.

Date : 10-4-2002 [H.K.Rathod, J.]

#kailash#